IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.5 of 2006
Date of decision:12.10.2006

Commissioner, central Excise, Central Excise House, F-Block, Rishi Nagar, Ludhiana.

....Appellant

versus

M/s Shreyans Industries Limited, Village Malikur, Ahmedgarh, District Sangrur.

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mrs. Daya Chaudhary, Assistant Solicitor General of India, for the appellant.

Mr. OP Goyal, Sr.Advocate with Mrs.Mamta B.Jain, Advocate, for the respondent.

JUDGMENT:

1. This appeal has been preferred by the revenue against the order dated 4.5.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi in Appeal No.E/2888/04-B, proposing following substantial question of law:-

> "Whether the manufacturer was not required to reverse the Cenvat Credit in respect of inputs lying in stock and as well as used in semi-finished/finished goods lying in stock as on 31.3.2001 which were used in the manufacture of excisable goods wholly exempted from payment of duty under Notification No.3/2001 dated 1.3.2001?"

2. The assessee is manufacturing various types of papers and

opted for availing benefit of Notification No.3/2001 in respect of paper and paper board manufactured out of pulp containing 75% weight of material other than banboo, reeds or rags. The assessee was also manufacturing other type of papers which were cleared on payment of duty.

3. Case of the revenue was that manufacturer was liable to pay duty on goods mentioned under the notification equal to the credit allowed in respect of inputs lying in stock or used in finished excisable goods when option was exercised. The Tribunal upheld the claim of the assessee on the ground that the assessee was manufacturing all types of papers and the assessee was reversing the credit in respect of inputs used in papers under Notification No.3/2001.

4. Learned counsel for the revenue submitted that since the inputs were being consumed in exempted goods, manufacturer availing of exemption could not avail of the benefit of Modvat credit in respect of the inputs lying in the stock.

5. Learned counsel for the assessee, however, submitted that since the assessee had reversed the credit in respect of inputs as noticed by the Tribunal in the impugned order in para 7, the question does not arise.

6. We have heard learned counsel for the parties.

7. It may be worthwhile to extract observations made by the Tribunal in the impugned order:-

> "7. In this case the appellants were also manufacturing the paper other than covered under the Notification No.3/2001, which was being cleared on payment of duty and the common inputs were used in the manufacture of all types of papers. Therefore, in this situation, the reversal of credit in respect of the inputs lying in stock and contained in the final product is uncalled for. The appellant also, during argument, submitted that they were reversing the credit in respect of the inputs and which are contained in the papers cleared under Notification No.3/2001. In this situation, we find merit in the argument of the appellant and demand is unsustainable and set aside and the appeal is allowed."

8. In view of factual position noticed by the Tribunal that the assessee was reversing the Modvat credit on the inputs used in manufacture

of paper under Notification No.03/2001, the question sought to be raised cannot be held to be substantial question of law.

9. The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

October 12, 2006
'gs'

(Rajesh Bindal)
Judge